

REMARKS

In the Office Action, Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,536,511 ("*Yatka*") in view of U.S. Patent No. 5,336,509 ("*McGrew*"). In addition, Claims 9 and 14 are objected to based upon minor informalities. In response, Claims 9 and 14 have been amended. In addition, new claims 21-36 have been added. Support for the newly added claims can be found on pages 2-9 of the Application. Applicants respectfully submit that the rejections have been overcome or are improper in view of the amendments and for the reasons set forth below.

Claims 9 and 14 were objected to based upon a minor typographical error. The claims have been amended to correct the informality cited by the Examiner. Accordingly, Applicants submit the objections have been overcome.

In the Office Action, Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yatka* in view of *McGrew*. Applicants believe this rejection is improper and should be withdrawn.

The present invention is directed to a coated chewing gum product comprising a gum center that includes a water soluble portion and a water insoluble portion. The water insoluble portion comprises at least 50% by weight of the gum center and the gum center includes less than 5% by weight of bulk sweeteners. The product also includes a coating that at least substantially surrounds the gum center. The present invention is also directed to novel methods of using the coated chewing gum product. The invention further provides a coated chewing gum product comprising a gum center that includes a water insoluble portion. The water insoluble portion comprises at least 50% by weight of the gum center and the gum center includes less than 5% by weight of bulk sweeteners.

Yatka is directed to a chewing gum product which includes a gum pellet covered by a hard coating containing erythritol and xylitol. Contrary to the Examiner's assertion the chewing gum product of *Yatka* includes an insoluble gum base which comprises waxes. See Col. 4, lines 53-57. Indeed, commonly employed waxes disclosed in *Yatka* include paraffin, microcrystalline and natural waxes among others. See Col. 4, lines 66-67. As admitted by the Examiner, *Yatka*

does not disclose or suggest a composition which includes less than 5% of bulk sweetener. See Office Action at 2.

In contrast, *McGrew* is primarily directed to a wax-free low calorie, high base chewing gum. Applicants acknowledge that *McGrew* does disclose reducing the bulking agent in a wax-free chewing gum composition. However, Applicants do not agree that *McGrew* is properly combinable with *Yatka*.

McGrew goes into great detail about the disadvantages and negative consequences of using wax in a gum base. See Col. 1, lines 23-29. Applicants submit that insofar as *McGrew* is solely directed to wax-free chewing gum compositions it clearly constitutes a teaching away from *Yatka* which as mentioned above includes a number of waxes as preferred components in the chewing gum base. Here, there simply is no basis for one skilled in the art to combine these references since the teachings are in such conflict with one another.

The Federal Circuit has held that it is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Furthermore, one cannot use "hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). It would fly in the face of the above cases to allow the Examiner to pick the two lines cited in *McGrew* out of fifteen pages of disclosure in order to modify the teachings of *Yatka* and render obvious the present invention. This is all the more true since there are at least several full pages of disclosure in *McGrew* which clearly conflict with and teach away from *Yatka*. In order to combine these references one skilled in the art would have to completely ignore the main purpose of *McGrew* and would still have to find the scant disclosure the Patent Office is relying on. As such, Applicants assert that these references are clearly not properly combinable. Accordingly, Applicants respectfully submit that claims 1-20 and newly added claims 21-36 are patentable over this combination of references.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

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Respectfully submitted,

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